

EXHIBIT H

Tammy Kitzmiller, et al. v.
Dover Area School District, et al.

Richard Nilsen
January 3, 2005

Page 25

- [1] A: Three and a half years.
[2] Q: When you were Assistant Superintendent, did you have
[3] responsibilities for curriculum as Mr. Baksa does now?
[4] A: Yes.
[5] Q: And prior to becoming Assistant Superintendent, what did
[6] you do?
[7] A: Director of Curriculum Instruction.
[8] Q: For Dover area?
[9] A: No. Big Springs School District.
[10] Q: How long did you hold that position?
[11] A: Five years. Five or six.
[12] Q: And prior to that?
[13] A: High School Principal, Big Springs School District.
[14] Q: How long did you hold that position?
[15] A: Total five years.
[16] Q: You used the word total. Was it broken up?
[17] A: Yes.
[18] Q: Why was that?
[19] A: I was acting one year, then returned to the Assistant
[20] Principal's position. I then went to another District
[21] for three years, then returned for four.
[22] Q: When you were in the other District, were you also
[23] Principal?
[24] A: Yes.
[25] Q: Prior to taking positions as a Principal or Assistant

Page 26

- [1] Principal, were you ever a schoolteacher?
[2] A: Yes.
[3] Q: What subjects did you teach?
[4] A: Social studies.
[5] Q: How long did you do that?
[6] A: Five and a half years.
[7] Q: Where did you get your degree?
[8] A: Which one?
[9] Q: What degrees do you have?
[10] A: I have an undergraduate BA in social studies from Gordon
[11] College. I have a Master's in Administration from
[12] Shippensburg University, and I have a doctorate from
[13] Temple University. So I am actually Dr. Nilsen.
[14] Q: During any of your college and post graduate education,
[15] did you take any science courses?
[16] A: No. Wait a minute. You said undergraduate?
[17] MR. GILLEN: He did I believe.
[18] A: Yes.
[19] BY MR. ROTHSCHILD:
[20] Q: Did you take any biology courses?
[21] A: No. I took a theory of science I believe.
[22] Q: While you were an undergraduate?
[23] A: Yes.
[24] Q: That is the only science subject you can remember taking
[25] as an undergraduate?

Page 27

- [1] A: No. I am sorry. That is over 30 years ago. That is
[2] all I remember.
[3] Q: Have you attended any courses or lectures or seminars
[4] relating to the subjects of evolution, Intelligent
[5] Design, creation or Creationism?
[6] A: No.
[7] Q: How often does the Dover Area School Board meet?
[8] A: Usually twice a month.
[9] Q: Do you attend all those meetings?
[10] A: Yes.
[11] Q: Who keeps the minutes of those meetings?
[12] A: The secretary.
[13] Q: How is the secretary position selected?
[14] A: To clarify, the Board approves a secretary. Our current
[15] secretary of the Board is battling cancer and has not
[16] been in the District for over a year and a half. We
[17] have had an Acting Secretary who the Board formally
[18] approved as Assistant Secretary.
[19] On one occasion, October 18th, we had an
[20] additional individual sit in as the Board secretary.
[21] Q: In place of the Acting Secretary?
[22] A: Yes.
[23] Q: Is it the practice of the Board to record the meeting?
[24] A: Yes.
[25] Q: What is done with those recordings after the meeting is

Page 28

- [1] completed?
[2] A: They are kept until the Board officially approves the
[3] minutes. After the approval of the minutes, the tapes
[4] are destroyed.
[5] Q: Who developed the policy of destroying the tapes after
[6] the minutes are approved?
[7] A: Don't know. It happened prior to me.
[8] Q: Are there any circumstances where the full Board meets
[9] that is not open to the public?
[10] A: Yes.
[11] Q: Is there a name for those kinds of meetings?
[12] A: Executive session.
[13] Q: Do you attend those sessions?
[14] A: Some.
[15] Q: What are the — let me back up. Is it your
[16] responsibility to attend all the full public Board
[17] meetings?
[18] A: Yes.
[19] Q: What are the circumstances where you will attend an
[20] executive session meeting?
[21] A: If requested by the Board to attend.
[22] Q: Does anyone record what is said in the executive session
[23] meetings?
[24] A: No.
[25] Q: Who developed the policy of not recording executive

Tammy Kitzmiller, et al. v.
Dover Area School District, et al.

Richard Nilsen
January 3, 2005

Page 49

- (1) is — that was added to the biology curriculum through
(2) the October 18th resolution?
(3) A: Yes.
(4) Q: Total discretion?
(5) A: Total.
(6) Q: Am I correct in understanding your testimony that
(7) teachers are not required to bring the Pandas book into
(8) their classroom when they teach this unit?
(9) A: That's correct.
(10) Q: Is anybody else besides teachers allowed to take those
(11) textbooks, the Pandas textbooks out of the library?
(12) A: Students.
(13) Q: Mr. Nilsen, when I asked you about your prior
(14) experience, you talked about serving as Assistant
(15) Principal, Principal, Assistant Superintendent and
(16) Superintendent in various school districts.
(17) In any school districts that you have been an
(18) administrator in, has the subject of Intelligent Design
(19) be part of the curriculum?
(20) A: No.
(21) Q: What about the subject of Creationism?
(22) A: Not that I'm aware of.
(23) Q: If I extend that question to any school district in
(24) which you have taught, would your answer be the same?
(25) A: Yes.

Page 50

- (1) Q: What newspapers do you read as a regular matter?
(2) A: The Patriot News and the two York County papers.
(3) Q: Do you read the two York County papers everyday?
(4) A: I read the — I have a secretary pull all related
(5) educational articles.
(6) Q: Do those clippings include the articles that have been
(7) written about the biology curriculum issue during 2004?
(8) A: Yes.
(9) Q: Have you ever asked any newspapers to correct anything
(10) that has been reported about the biology curriculum?
(11) MR. GILLEN: Objection, relevance. Answer,
(12) please. I'm sorry.
(13) A: I have asked them to read the press release on the
(14) District web page.
(15) BY MR. ROTHSCCHILD:
(16) Q: Other than that, have you ever asked the newspapers to
(17) correct anything reported about the biology curriculum?
(18) MR. GILLEN: Same objection.
(19) A: I don't remember.
(20) BY MR. ROTHSCCHILD:
(21) Q: Have you ever asked them to retract any item reported
(22) about the biology curriculum?
(23) MR. GILLEN: Objection, relevance.
(24) A: No.
(25)

Page 51

- (1) BY MR. ROTHSCCHILD:
(2) Q: Have you ever communicated to any newspaper that you
(3) have been misquoted regarding the subject of the biology
(4) curriculum?
(5) MR. GILLEN: Objection, relevance.
(6) A: No.
(7) BY MR. ROTHSCCHILD:
(8) Q: Have you ever communicated to any newspaper that any
(9) other individual has been misquoted regarding the
(10) biology curriculum?
(11) MR. GILLEN: Objection, relevance.
(12) A: Sorry. Could you ask that question again?
(13) BY MR. ROTHSCCHILD:
(14) Q: Have you ever communicated to any newspaper that any
(15) individual besides yourself was misquoted or
(16) misrepresented in the reporting about the biology
(17) curriculum?
(18) MR. GILLEN: Same objection.
(19) A: Housed within the press release is a sentence that says
(20) many statements have been personal statements and
(21) opinions from the media, community members and Board
(22) members which are completely inaccurate or false. That
(23) has been communicated publicly.
(24) BY MR. ROTHSCCHILD:
(25) Q: Is that the only way that that has been communicated?

Page 52

- (1) A: Yes.
(2) Q: Are you aware of anybody else involved with the biology
(3) curriculum, School District employees or School Board
(4) members communicating to any newspaper that they have
(5) been misquoted or their statements misrepresented?
(6) MR. GILLEN: Objection, relevance.
(7) A: I am sorry. Ask that question again.
(8) BY MR. ROTHSCCHILD:
(9) Q: Are you aware of anybody else involved with this biology
(10) curriculum issue, School Board members or employees of
(11) the School District communicating to the newspapers that
(12) they misreported something or misquoted them?
(13) A: Yes.
(14) Q: Who has done that?
(15) A: Mr. Bonsell and Mr. Buckingham.
(16) Q: What statements reported in the newspaper articles —
(17) A: I can't speak to that.
(18) MR. GILLEN: Objection, relevance.
(19) BY MR. ROTHSCCHILD:
(20) Q: How do you know that they communicated that to the
(21) newspapers?
(22) A: They individually told me that they had talked to
(23) reporters about their misstatements and
(24) misrepresentations.
(25) MR. GILLEN: Whose misstatement and

Page 57

- [1] A: Not that I can remember.
[2] Q: Do you remember any other School Board member bringing
[3] up the subject of Creationism at any School Board
[4] meeting?
[5] A: Not that I can remember.
[6] Q: If you can turn to the next page.
[7] A: (Witness complies.)
[8] Q: Do you see there is a paragraph which begins with the
[9] words Assistant Superintendent Michael Baksa?
[10] A: Yes.
[11] Q: And two paragraphs down from that, the article reports
[12] that Mr. Baksa said that teachers may make reference to
[13] Creationism in class. Do you see that?
[14] A: Yes.
[15] Q: Were you aware that —
[16] MR. GILLEN: Objection, hearsay.
[17] BY MR. ROTHSCHILD:
[18] Q: Were you aware that the newspaper reported that
[19] statement by Mr. Baksa?
[20] A: I don't remember that, no.
[21] Q: Do you know whether Mr. Baksa made that statement?
[22] A: I don't remember that.
[23] Q: Do you remember Mr. Baksa ever making any statements
[24] about teachers making reference to Creationism in class?
[25] A: No, I do not.

Page 58

- [1] Q: Would you turn to the next article which is a June 9th,
[2] 2004 article from the York Daily Record?
[3] A: (Witness complies.)
[4] Q: Do you see at the bottom of the paragraph — it reports
[5] Board President Alan Bonsell disagreed saying there were
[6] only two theories (Creationism and evolution) that could
[7] possibly be taught. Are you aware —
[8] MR. GILLEN: Objection, hearsay.
[9] BY MR. ROTHSCHILD:
[10] Q: Are you aware of the newspaper reporting that statement
[11] by Mr. Bonsell?
[12] A: I do not remember that, no.
[13] Q: Do you remember Mr. Bonsell making that statement?
[14] A: No, I do not.
[15] Q: Do you remember Mr. Bonsell making any reference to
[16] Creationism at any time in a Board meeting?
[17] A: At a Board meeting, I do not remember that, no.
[18] MR. ROTHSCHILD: Pat, as we go through these
[19] articles, you can have a standing objection to hearsay.
[20] I don't agree with it, but you won't have waived it by
[21] not making it each time.
[22] MR. GILLEN: Okay.
[23] BY MR. ROTHSCHILD:
[24] Q: Could you turn to the next article which is a June 10th,
[25] 2004 article from the York Daily Record?

Page 59

- [1] A: (Witness complies.)
[2] Q: In the third paragraph, it says during this past Monday
[3] night's Board meeting, Board members Alan Bonsell, Noel
[4] Wenrich, and Buckingham spoke aggressively in favor of
[5] have a biology book that includes creation as part of
[6] the text.
[7] Were you aware that the newspaper reported that?
[8] A: No.
[9] Q: Do you recall any of those individuals speaking in favor
[10] of a biology book that includes theories of Creationism
[11] as part of the text?
[12] A: No.
[13] Q: Could you turn to the article, the June 14th, 2004 York
[14] Daily Record article?
[15] A: Are these in order?
[16] Q: They are in the chronological order, yes.
[17] A: Okay.
[18] Q: In the second paragraph, it is reported that at Monday's
[19] School Board meeting, William Buckingham said as part of
[20] a search for a new biology book, he and others are
[21] looking for one that offers balance between Christian
[22] views of creation and Darwin's Theory of Evolution.
[23] Were you aware —
[24] A: That is not June 14th.
[25] MR. GILLEN: He is looking at the second piece.

Page 60

- [1] Turn the page.
[2] BY MR. ROTHSCHILD:
[3] Q: Sorry about that.
[4] A: There's two 14's.
[5] Q: Do you see the second paragraph?
[6] A: Yes.
[7] Q: Were you aware that the newspaper reported those
[8] statements by Mr. Buckingham?
[9] A: No.
[10] Q: Do you remember Mr. Buckingham making those statements?
[11] A: No.
[12] Q: Do you have a personal understanding of what is meant by
[13] the term Creationism?
[14] A: Yes.
[15] Q: What is your understanding?
[16] A: My understanding is creation refers to the Biblical
[17] account of the origins of life.
[18] Q: Anything else?
[19] A: No.
[20] Q: Do you know that to be a scientific proposition?
[21] A: I do or do not. I have no comment on that.
[22] Q: You don't have an understanding?
[23] A: No.
[24] Q: In the same article two paragraphs down, the paper
[25] reports that Mr. Buckingham said this country wasn't

Richard Nilsen
January 3, 2005

Tammy Kitzmiller, et al. v.
Dover Area School District, et al.

Page 69

- (1) prepared that statement?
- (2) A: Mr. Baksa in conjunction with Board members and
- (3) teachers.
- (4) Q: Other than providing the teachers that statement which
- (5) they are required to read, have the teachers been given
- (6) any other guidance about how to present this unit?
- (7) A: Yes.
- (8) Q: What other guidance?
- (9) A: If any student brings up the question of either any
- (10) other Creationism or any other origins of life, they
- (11) have been directed not to speak to that, but to give
- (12) that information and that question directly to either
- (13) their parents and/or their own research.
- (14) Q: Let me make sure I got that right. If any student
- (15) brings up either Creationism or origins of life, they
- (16) are directed not to answer, but to instruct the students
- (17) to ask their parents or do their own research?
- (18) A: Yes.
- (19) Q: Have the teachers been given any other guidance besides
- (20) that directive?
- (21) A: No.
- (22) Q: Who gave the teachers that directive?
- (23) A: Me.
- (24) Q: How was that communicated?
- (25) A: November 24th, 1:05, this office, this room.

Page 70

- (1) Q: Sitting around a table?
- (2) A: Yes.
- (3) Q: Who was present for that meeting?
- (4) A: Mr. Baksa, myself, the Union President, Bill Miller,
- (5) Past President, and the Science Department.
- (6) Q: Did you instruct them how they — how they were required
- (7) to answer any other kinds of questions by students
- (8) relating to this unit?
- (9) A: They were instructed not to answer any questions dealing
- (10) with the origins of life. Any other questions in
- (11) Darwinian Theory or anything else that is discussed is
- (12) within their own domain.
- (13) Q: Did you give them any instructions about how to answer
- (14) questions about the subject of Intelligent Design?
- (15) A: Yes.
- (16) Q: What instructions were those?
- (17) A: Not to discuss it. Report — any student requesting
- (18) that is to immediately go back to either their parents
- (19) or their own research, not a topic of discussion.
- (20) Q: Why?
- (21) A: Why was Mr. Miller the past President?
- (22) Q: No. Well done.
- (23) A: I figured at 11:30, you needed it.
- (24) Q: Why did you give the teachers the directive not to
- (25) answer any questions about Intelligent Design?

Page 71

- (1) A: I didn't want to be sitting in a meeting with you across
- (2) the table in a legal suit.
- (3) Q: Is that the only reason?
- (4) A: I believe it is a topic of discussion that should be
- (5) discussed with parents, not the School District.
- (6) Q: What is it about Intelligent Design which is part of the
- (7) school's biology curriculum which makes it —
- (8) MR. GILLEN: Objection, foundation,
- (9) characterization.
- (10) BY MR. ROTHSCILD:
- (11) Q: What is it about Intelligent Design that makes it a
- (12) subject appropriate for discussion with parents, but not
- (13) in the school?
- (14) A: The school has decided that the curriculum should focus
- (15) on the Darwinian theory and not focus on other options
- (16) due to time constraints.
- (17) Q: Is that the only reason — is time constraints the only
- (18) reason that the school has decided it should focus on
- (19) Darwin and not other options?
- (20) A: We are specifically, as the press release says, a
- (21) standards driven curriculum and only address the
- (22) standards.
- (23) Q: What is the purpose of addressing this section of the
- (24) curriculum if it is not going to be discussed, not part
- (25) of the standards?

Page 72

- (1) A: The purpose is there are individual students that have
- (2) other opinions beyond the Darwinian. We did not want to
- (3) be discrimination. We firmly believe that any
- (4) individual has a right to their own beliefs. We do not
- (5) want to be discriminatory.
- (6) We are required to teach Darwin. We are also
- (7) required not to be discriminatory.
- (8) Q: How do you know that there are individual students that
- (9) have other opinions besides Darwin's?
- (10) A: I have talked to other students.
- (11) Q: Is it your understanding that the individual opinion
- (12) that these students hold different from Darwin's theory
- (13) is Intelligent Design?
- (14) MR. GILLEN: Objection, foundation.
- (15) A: Could you ask that question, again?
- (16) BY MR. ROTHSCILD:
- (17) Q: Is it your understanding that the individual beliefs
- (18) that these individuals hold different from Darwin's
- (19) theory include Intelligent Design?
- (20) A: Some, yes.
- (21) Q: When did you become aware that students believed in
- (22) Intelligent Design?
- (23) A: Since I have been in education.
- (24) Q: Mr. Nilsen, didn't you testify that the first time you
- (25) became aware of Intelligent Design was July, 2004?

Tammy Kitzmiller, et al. v.
Dover Area School District, et al.

Richard Nilsen
January 3, 2005

Page 25

- (1) A: Three and a half years.
(2) Q: When you were Assistant Superintendent, did you have
(3) responsibilities for curriculum as Mr. Baksa does now?
(4) A: Yes.
(5) Q: And prior to becoming Assistant Superintendent, what did
(6) you do?
(7) A: Director of Curriculum Instruction.
(8) Q: For Dover area?
(9) A: No. Big Springs School District.
(10) Q: How long did you hold that position?
(11) A: Five years. Five or six.
(12) Q: And prior to that?
(13) A: High School Principal, Big Springs School District.
(14) Q: How long did you hold that position?
(15) A: Total five years.
(16) Q: You used the word total. Was it broken up?
(17) A: Yes.
(18) Q: Why was that?
(19) A: I was acting one year, then returned to the Assistant
(20) Principal's position. I then went to another District
(21) for three years, then returned for four.
(22) Q: When you were in the other District, were you also
(23) Principal?
(24) A: Yes.
(25) Q: Prior to taking positions as a Principal or Assistant

Page 26

- (1) Principal, were you ever a schoolteacher?
(2) A: Yes.
(3) Q: What subjects did you teach?
(4) A: Social studies.
(5) Q: How long did you do that?
(6) A: Five and a half years.
(7) Q: Where did you get your degree?
(8) A: Which one?
(9) Q: What degrees do you have?
(10) A: I have an undergraduate BA in social studies from Gordon
(11) College. I have a Master's in Administration from
(12) Shippensburg University, and I have a doctorate from
(13) Temple University. So I am actually Dr. Nilsen.
(14) Q: During any of your college and post graduate education,
(15) did you take any science courses?
(16) A: No. Wait a minute. You said undergraduate?
(17) MR. GILLEN: He did I believe.
(18) A: Yes.
(19) BY MR. ROTHSCHILD:
(20) Q: Did you take any biology courses?
(21) A: No. I took a theory of science I believe.
(22) Q: While you were an undergraduate?
(23) A: Yes.
(24) Q: That is the only science subject you can remember taking
(25) as an undergraduate?

Page 27

- (1) A: No. I am sorry. That is over 30 years ago. That is
(2) all I remember.
(3) Q: Have you attended any courses or lectures or seminars
(4) relating to the subjects of evolution, Intelligent
(5) Design, creation or Creationism?
(6) A: No.
(7) Q: How often does the Dover Area School Board meet?
(8) A: Usually twice a month.
(9) Q: ~~Do you attend all those meetings?~~
(10) A: Yes.
(11) Q: Who keeps the minutes of those meetings?
(12) A: The secretary.
(13) Q: How is the secretary position selected?
(14) A: To clarify, the Board approves a secretary. Our current
(15) secretary of the Board is battling cancer and has not
(16) been in the District for over a year and a half. We
(17) have had an Acting Secretary who the Board formally
(18) approved as Assistant Secretary.
(19) On one occasion, October 18th, we had an
(20) additional individual sit in as the Board secretary.
(21) Q: In place of the Acting Secretary?
(22) A: Yes.
(23) Q: ~~Is it the practice of the Board to record the meeting?~~
(24) A: Yes.
(25) Q: ~~What is done with those recordings after the meeting is~~

Page 28

- (1) completed?
(2) A: They are kept until the Board officially approves the
(3) minutes. After the approval of the minutes, the tapes
(4) are destroyed.
(5) Q: Who developed the policy of destroying the tapes after
(6) the minutes are approved?
(7) A: Don't know. It happened prior to me.
(8) Q: Are there any circumstances where the full Board meets
(9) that is not open to the public?
(10) A: Yes.
(11) Q: Is there a name for those kinds of meetings?
(12) A: Executive session.
(13) Q: Do you attend those sessions?
(14) A: Some.
(15) Q: What are the — let me back up. Is it your
(16) responsibility to attend all the full public Board
(17) meetings?
(18) A: Yes.
(19) Q: What are the circumstances where you will attend an
(20) executive session meeting?
(21) A: If requested by the Board to attend.
(22) Q: Does anyone record what is said in the executive session
(23) meetings?
(24) A: No.
(25) Q: Who developed the policy of not recording executive

Tammy Kitzmiller, et al. v.
Dover Area School District, et al.

Richard Nilsen
January 3, 2005

Page 49

- [1] is — that was added to the biology curriculum through
[2] the October 18th resolution?
[3] A: Yes.
[4] Q: Total discretion?
[5] A: Total.
[6] Q: Am I correct in understanding your testimony that
[7] teachers are not required to bring the Pandas book into
[8] their classroom when they teach this unit?
[9] A: That's correct.
[10] Q: Is anybody else besides teachers allowed to take those
[11] textbooks, the Pandas textbooks out of the library?
[12] A: Students.
[13] Q: Mr. Nilsen, when I asked you about your prior
[14] experience, you talked about serving as Assistant
[15] Principal, Principal, Assistant Superintendent and
[16] Superintendent in various school districts.
[17] In any school districts that you have been an
[18] administrator in, has the subject of Intelligent Design
[19] be part of the curriculum?
[20] A: No.
[21] Q: What about the subject of Creationism?
[22] A: Not that I'm aware of.
[23] Q: If I extend that question to any school district in
[24] which you have taught, would your answer be the same?
[25] A: Yes.

Page 50

- [1] Q: ~~What newspapers do you read as a regular matter?~~
[2] A: ~~The Patriot News and the two York County papers.~~
[3] Q: Do you read the two York County papers everyday?
[4] A: I read the — I have a secretary pull all related
[5] educational articles.
[6] Q: Do those clippings include the articles that have been
[7] written about the biology curriculum issue during 2004?
[8] A: Yes.
[9] Q: Have you ever asked any newspapers to correct anything
[10] that has been reported about the biology curriculum?
[11] MR. GILLEN: Objection, relevance. Answer,
[12] please. I'm sorry.
[13] A: I have asked them to read the press release on the
[14] District web page.
[15] BY MR. ROTHSCHILD:
[16] Q: Other than that, have you ever asked the newspapers to
[17] correct anything reported about the biology curriculum?
[18] MR. GILLEN: Same objection.
[19] A: I don't remember.
[20] BY MR. ROTHSCHILD:
[21] Q: Have you ever asked them to retract any item reported
[22] about the biology curriculum?
[23] MR. GILLEN: Objection, relevance.
[24] A: No.
[25]

Page 51

- [1] BY MR. ROTHSCHILD:
[2] Q: Have you ever communicated to any newspaper that you
[3] have been misquoted regarding the subject of the biology
[4] curriculum?
[5] MR. GILLEN: Objection, relevance.
[6] A: No.
[7] BY MR. ROTHSCHILD:
[8] Q: Have you ever communicated to any newspaper that any
[9] other individual has been misquoted regarding the
[10] biology curriculum?
[11] MR. GILLEN: Objection, relevance.
[12] A: Sorry. Could you ask that question again?
[13] BY MR. ROTHSCHILD:
[14] Q: Have you ever communicated to any newspaper that any
[15] individual besides yourself was misquoted or
[16] misrepresented in the reporting about the biology
[17] curriculum?
[18] MR. GILLEN: Same objection.
[19] A: Housed within the press release is a sentence that says
[20] many statements have been personal statements and
[21] opinions from the media, community members and Board
[22] members which are completely inaccurate or false. That
[23] has been communicated publicly.
[24] BY MR. ROTHSCHILD:
[25] Q: Is that the only way that that has been communicated?

Page 52

- [1] A: Yes.
[2] Q: Are you aware of anybody else involved with the biology
[3] curriculum, School District employees or School Board
[4] members communicating to any newspaper that they have
[5] been misquoted or their statements misrepresented?
[6] MR. GILLEN: Objection, relevance.
[7] A: I am sorry. Ask that question again.
[8] BY MR. ROTHSCHILD:
[9] Q: Are you aware of anybody else involved with this biology
[10] curriculum issue, School Board members or employees of
[11] the School District communicating to the newspapers that
[12] they misreported something or misquoted them?
[13] A: Yes.
[14] Q: Who has done that?
[15] A: Mr. Bonsell and Mr. Buckingham.
[16] Q: What statements reported in the newspaper articles —
[17] A: I can't speak to that.
[18] MR. GILLEN: Objection, relevance.
[19] BY MR. ROTHSCHILD:
[20] Q: How do you know that they communicated that to the
[21] newspapers?
[22] A: They individually told me that they had talked to
[23] reporters about their misstatements and
[24] misrepresentations.
[25] MR. GILLEN: Whose misstatement and

Tammy Kitzmiller, et al. v.
Dover Area School District, et al.

Richard Nilsen
January 3, 2005

Page 57

- [1] A: Not that I can remember.
[2] Q: Do you remember any other School Board member bringing
[3] up the subject of Creationism at any School Board
[4] meeting?
[5] A: Not that I can remember.
[6] Q: If you can turn to the next page.
[7] A: (Witness complies.)
[8] Q: Do you see there is a paragraph which begins with the
[9] words Assistant Superintendent Michael Baksa?
[10] A: Yes.
[11] Q: And two paragraphs down from that, the article reports
[12] that Mr. Baksa said that teachers may make reference to
[13] Creationism in class. Do you see that?
[14] A: Yes.
[15] Q: Were you aware that —
[16] MR. GILLEN: Objection, hearsay.
[17] BY MR. ROTHSCHILD:
[18] Q: Were you aware that the newspaper reported that
[19] statement by Mr. Baksa?
[20] A: I don't remember that, no.
[21] Q: Do you know whether Mr. Baksa made that statement?
[22] A: I don't remember that.
[23] Q: Do you remember Mr. Baksa ever making any statements
[24] about teachers making reference to Creationism in class?
[25] A: No, I do not.

Page 58

- [1] Q: Would you turn to the next article which is a June 9th,
[2] 2004 article from the York Daily Record?
[3] A: (Witness complies.)
[4] Q: Do you see at the bottom of the paragraph — it reports
[5] Board President Alan Bonsell disagreed saying there were
[6] only two theories (Creationism and evolution) that could
[7] possibly be taught. Are you aware —
[8] MR. GILLEN: Objection, hearsay.
[9] BY MR. ROTHSCHILD:
[10] Q: Are you aware of the newspaper reporting that statement
[11] by Mr. Bonsell?
[12] A: I do not remember that, no.
[13] Q: Do you remember Mr. Bonsell making that statement?
[14] A: No, I do not.
[15] Q: Do you remember Mr. Bonsell making any reference to
[16] Creationism at any time in a Board meeting?
[17] A: At a Board meeting, I do not remember that, no.
[18] MR. ROTHSCHILD: Pat, as we go through these
[19] articles, you can have a standing objection to hearsay.
[20] I don't agree with it, but you won't have waived it by
[21] not making it each time.
[22] MR. GILLEN: Okay.
[23] BY MR. ROTHSCHILD:
[24] Q: Could you turn to the next article which is a June 10th,
[25] 2004 article from the York Daily Record?

Page 59

- [1] A: (Witness complies.)
[2] Q: In the third paragraph, it says during this past Monday
[3] night's Board meeting, Board members Alan Bonsell, Noel
[4] Wenrich, and Buckingham spoke aggressively in fair of
[5] have a biology book that includes creation as part of
[6] the text.
[7] Were you aware that the newspaper reported that?
[8] A: No.
[9] Q: Do you recall any of those individuals speaking in favor
[10] of a biology book that includes theories of Creationism
[11] as part of the text?
[12] A: No.
[13] Q: Could you turn to the article, the June 14th, 2004 York
[14] Daily Record article?
[15] A: Are these in order?
[16] Q: They are in the chronological order, yes.
[17] A: Okay.
[18] Q: In the second paragraph, it is reported that at Monday's
[19] School Board meeting, William Buckingham said as part of
[20] a search for a new biology book, he and others are
[21] looking for one that offers balance between Christian
[22] views of creation and Darwin's Theory of Evolution.
[23] Were you aware —
[24] A: That is not June 14th.
[25] MR. GILLEN: He is looking at the second piece.

Page 60

- [1] Turn the page.
[2] BY MR. ROTHSCHILD:
[3] Q: Sorry about that.
[4] A: There's two 14's.
[5] Q: Do you see the second paragraph?
[6] A: Yes.
[7] Q: Were you aware that the newspaper reported those
[8] statements by Mr. Buckingham?
[9] A: No.
[10] Q: Do you remember Mr. Buckingham making those statements?
[11] A: No.
[12] Q: Do you have a personal understanding of what is meant by
[13] the term Creationism?
[14] A: Yes.
[15] Q: What is your understanding?
[16] A: My understanding is creation refers to the Biblical
[17] account of the origins of life.
[18] Q: Anything else?
[19] A: No.
[20] Q: Do you know that to be a scientific proposition?
[21] A: I do or do not. I have no comment on that.
[22] Q: You don't have an understanding?
[23] A: No.
[24] Q: In the same article two paragraphs down, the paper
[25] reports that Mr. Buckingham said this country wasn't

Richard Nilsen
January 3, 2005

Tammy Kitzmiller, et al. v.
Dover Area School District, et al.

Page 69

- (1) prepared that statement?
- (2) A: Mr. Baksa in conjunction with Board members and
- (3) teachers.
- (4) Q: Other than providing the teachers that statement which
- (5) they are required to read, have the teachers been given
- (6) any other guidance about how to present this unit?
- (7) A: Yes.
- (8) Q: What other guidance?
- (9) A: If any student brings up the question of either any
- (10) other Creationism or any other origins of life, they
- (11) have been directed not to speak to that, but to give
- (12) that information and that question directly to either
- (13) their parents and/or their own research.
- (14) Q: Let me make sure I got that right. If any student
- (15) brings up either Creationism or origins of life, they
- (16) are directed not to answer, but to instruct the students
- (17) to ask their parents or do their own research?
- (18) A: Yes.
- (19) Q: Have the teachers been given any other guidance besides
- (20) that directive?
- (21) A: No.
- (22) Q: Who gave the teachers that directive?
- (23) A: Me.
- (24) Q: How was that communicated?
- (25) A: November 24th, 1:05, this office, this room.

Page 70

- (1) Q: Sitting around a table?
- (2) A: Yes.
- (3) Q: Who was present for that meeting?
- (4) A: Mr. Baksa, myself, the Union President, Bill Miller,
- (5) Past President, and the Science Department.
- (6) Q: Did you instruct them how they — how they were required
- (7) to answer any other kinds of questions by students
- (8) relating to this unit?
- (9) A: They were instructed not to answer any questions dealing
- (10) with the origins of life. Any other questions in
- (11) Darwinian Theory or anything else that is discussed is
- (12) within their own domain.
- (13) Q: Did you give them any instructions about how to answer
- (14) questions about the subject of Intelligent Design?
- (15) A: Yes.
- (16) Q: What instructions were those?
- (17) A: Not to discuss it. Report — any student requesting
- (18) that is to immediately go back to either their parents
- (19) or their own research, not a topic of discussion.
- (20) Q: Why?
- (21) A: Why was Mr. Miller the past President?
- (22) Q: No. Well done.
- (23) A: I figured at 11:30, you needed it.
- (24) Q: Why did you give the teachers the directive not to
- (25) answer any questions about Intelligent Design?

Page 71

- (1) A: I didn't want to be sitting in a meeting with you across
- (2) the table in a legal suit.
- (3) Q: Is that the only reason?
- (4) A: I believe it is a topic of discussion that should be
- (5) discussed with parents, not the School District.
- (6) Q: What is it about Intelligent Design which is part of the
- (7) school's biology curriculum which makes it —
- (8) MR. GILLEN: Objection, foundation,
- (9) characterization.
- (10) BY MR. ROTHSCCHILD:
- (11) Q: What is it about Intelligent Design that makes it a
- (12) subject appropriate for discussion with parents, but not
- (13) in the school?
- (14) A: The school has decided that the curriculum should focus
- (15) on the Darwinian theory and not focus on other options
- (16) due to time constraints.
- (17) Q: Is that the only reason — is time constraints the only
- (18) reason that the school has decided it should focus on
- (19) Darwin and not other options?
- (20) A: We are specifically, as the press release says, a
- (21) standards driven curriculum and only address the
- (22) standards.
- (23) Q: What is the purpose of addressing this section of the
- (24) curriculum if it is not going to be discussed, not part
- (25) of the standards?

Page 72

- (1) A: The purpose is there are individual students that have
- (2) other opinions beyond the Darwinian. We did not want to
- (3) be discrimination. We firmly believe that any
- (4) individual has a right to their own beliefs. We do not
- (5) want to be discriminatory.
- (6) We are required to teach Darwin. We are also
- (7) required not to be discriminatory.
- (8) Q: How do you know that there are individual students that
- (9) have other opinions besides Darwin's?
- (10) A: I have talked to other students.
- (11) Q: Is it your understanding that the individual opinion
- (12) that these students hold different from Darwin's theory
- (13) is Intelligent Design?
- (14) MR. GILLEN: Objection, foundation.
- (15) A: Could you ask that question, again?
- (16) BY MR. ROTHSCCHILD:
- (17) Q: Is it your understanding that the individual beliefs
- (18) that these individuals hold different from Darwin's
- (19) theory include Intelligent Design?
- (20) A: Some, yes.
- (21) Q: When did you become aware that students believed in
- (22) Intelligent Design?
- (23) A: Since I have been in education.
- (24) Q: Mr. Nilsen, didn't you testify that the first time you
- (25) became aware of Intelligent Design was July, 2004?

00009

1 correct, three of the districts -- or I am sorry --
 2 three of the schools and which biology books they were
 3 using.
 4 Q What was your role in 2004 in the work of the curriculum
 5 committee's to select or recommend, rather, new
 6 textbooks in the School District?
 7 A My role as Superintendent were to place the book that
 8 Mr. Baksa as Director of Curriculum Instruction -- to
 9 place his recommendation on the Board agenda.
 10 Q It sounds like your role is passive. You simply take
 11 whatever Baksa gives you and put it on the agenda
 12 without making any judgments about whether it is an
 13 appropriate recommendation; am I right about that?
 14 A Passive to the extent of where Mr. Baksa in his capacity
 15 makes the recommendation. In this case and in most
 16 cases, his recommendation has been put on where I have
 17 not questioned his recommendation beyond the fact that
 18 did he follow procedure. And when he communicated to me
 19 he did, it was placed on the agenda.
 20 Q Mr. Baksa described some of the work that he did with
 21 the curriculum committees in the summer of 2004. I
 22 believe from his testimony that this inquiry to the
 23 parochial schools followed a June meeting of the School
 24 District Board when the biology textbook issue was
 25 discussed

Richard Nilsen 4/14/05 (Day 2)

Page 9

00010

1 Were you at that School Board meeting?
 2 A Yes.
 3 Q Do you recall the discussion about biology textbooks in
 4 the high school?
 5 A I remember the discussion, the specifics. I am not sure
 6 I remember all of them.
 7 Q What do you remember of the discussion?
 8 A I remember that Mr. Buckingham had some concerns about
 9 the textbook and was interested in looking at other
 10 options.
 11 Q What do you recall he said about his concerns about the
 12 textbook?
 13 A I believe he communicated his dissatisfaction with how
 14 the Darwinian Theory of Evolution was presented in the
 15 book.
 16 Q Was his dissatisfaction with how the Darwinian Theory
 17 was presented, or was his dissatisfaction with the
 18 absence of any other theory being presented?
 19 A My only recollection is how the Darwinian Theory was
 20 presented.
 21 Q What did he say about his dissatisfaction?
 22 A He documented -- and again the documentation I believe
 23 you have -- of areas of concern about how evolution was
 24 being presented in the book. Beyond that, I don't
 25 recollect what was specifically stated and/or written.

Richard Nilsen 4/14/05 (Day 2)

Page 10

00011

1 Q Did you make any notes yourself of the discussion of the
 2 biology textbook at that June Board meeting?
 3 A No.
 4 Q Do you have a practice of making notes during Board
 5 meetings?
 6 A Yes.
 7 Q What do you do with those notes?
 8 A All the notes I take are actions the Board has requested
 9 me to do and/or any changes in future agenda items.
 10 Once those items have been completed, those notes are
 11 thrown out.
 12 Q Did you make notes of the discussion of the biology
 13 textbook at the June meeting?
 14 A No.
 15 Q Did you have any conversation with Mr. Baksa after that
 16 meeting about the actions that should follow in
 17 connection with Mr. Buckingham's concerns or any other
 18 discussion that happened at that June meeting?
 19 A Yes.
 20 Q What was that discussion with Baksa?
 21 A My discussion with Mr. Baksa was he had to decide what
 22 direction he was going to go with as it related to the
 23 textbook and when the textbook decision was to be made
 24 Q At that time, I mean at the time of your discussion with
 25 Mr. Baksa, what did you think the directions were that

Richard Nilsen 4/14/05 (Day 2)

Page 11

00012

1 he needed to consider?
 2 A I think he needed to consider answering whatever
 3 concerns Mr. Buckingham and/or any other Board member
 4 had with the present recommended book Miller and Levin
 5 Biology.
 6 Q I understand that. But what did you think his options
 7 were? You referred -- and I am using the word options
 8 You referred to he needed to decide what direction he
 9 was going to go in. That suggests to me that there
 10 were -- there was more than one direction available to
 11 Baksa.
 12 What did you have in mind when you had that
 13 conversation with him?
 14 A I don't recommend -- my apologies. I don't recollect
 15 the full conversation, but obviously, there would be
 16 two. One would be to continue the conversation on the
 17 current book. Or two, look for other options that
 18 possibly anybody and everybody would be satisfied with.
 19 Q Did you give him any suggestions for how to find out
 20 more about other options than simply persisting with the
 21 Miller and Levin book?
 22 A Again, I don't remember any specific. It would not be
 23 out of character for me to tell him to call and make
 24 sure he has contacted every other district and everyone
 25 he knows of to see if there would have been another

Richard Nilsen 4/14/05 (Day 2)

Page 12

00017
 1 A. I will clarify your question. The family consumer
 2 science book was content issue based on the fact that
 3 they thought the content was already in our curriculum
 4 and didn't see the reason to purchase another book that
 5 had the same content.
 6 Q Okay.
 7 A. Not specifically along the same lines, but along the
 8 same general conversation. The District gets a donation
 9 from the county on a book pamphlet that we give to our
 10 students that has a number of agencies listed in it, and
 11 a Board member and a parent had a considerable concern
 12 on the information that was in the book, specifically
 13 dealing with comments dealing with sexual education and
 14 issues concerning specific agencies that was in there.
 15 To the point of where we ended up sending home
 16 information prior to the students receiving the books,
 17 as well as a discussion of whether to even continue
 18 handing out the individual books.
 19 And through my experience, not only in this
 20 district, but other districts, any time we have adopted
 21 a health curriculum, there has always been conversations
 22 zeroing in on what is and what is not taught as it
 23 relates to the curriculum.
 24 Mr. Bonsell and I had conversations and I believe
 25 a third party, but nonetheless I believe Mr. Bonsell has

Richard Nilsen 4/14/05 (Day 2)

Page 17

00018
 1 also talked to Mr. Baksa about the health curriculum in
 2 our education dealing with abstinence.
 3 I know Mr. Baksa is meeting next week, if not the
 4 following week, with another Board member dealing with
 5 our drug and alcohol curriculum, specifically where
 6 inhalants are being taught.
 7 If your question is does the Board hold
 8 discussions on multiple issues with content beyond this
 9 individual issue, my experience is yes.
 10 Q. On those issues where the Board has either demonstrated
 11 or expressed a keen interest in a decision like the
 12 distribution of a pamphlet, or the selection of a
 13 textbook, is it your practice as Mr. Baksa's supervisor
 14 and as the Superintendent of Schools to basically say we
 15 have got to pay attention to this, get it right, be sure
 16 that we do what we need to do to be giving all the
 17 information to the Board and do the best job we can?
 18 You don't treat it as a routine matter, do you?
 19 MR. GILLEN: I object to the form.
 20 A. I think it is a routine matter. I think the routine
 21 matter of the Board's reviewing curriculum and making
 22 comments about curriculum is routine. Board members
 23 historically have had conversations about what is in the
 24 curriculum, and their recommendations on what should be
 25 in the curriculum, and what type of curriculum should be

Richard Nilsen 4/14/05 (Day 2)

Page 18

00019
 1 placed in our planned courses. That is a routine
 2 matter.
 3 BY MR. SCHMIDT:
 4 Q. At the time of the June meeting in 2004, had you ever
 5 heard of the notion of Intelligent Design?
 6 A. Not that I can remember, no.
 7 Q. Do you remember your first contact with the Discovery
 8 Institute? And by you in this case, I am referring to
 9 you personally.
 10 A. Me personally, yes.
 11 Q. When did that contact take place?
 12 A. The fall of 2004.
 13 Q. Where did the contact take place?
 14 A. Over the phone.
 15 Q. Who else was involved in the telephone contact?
 16 A. No one else.
 17 Q. That wasn't meant to be a trick question. You were on
 18 the phone. Who else was on the phone, somebody from the
 19 Discovery Institute?
 20 A. Yes.
 21 Q. Do you remember who it was?
 22 A. No, I don't.
 23 Q. Do you know someone named Seth Cooper?
 24 A. Yes.
 25 Q. There is a deposition exhibit that has previously been

Richard Nilsen 4/14/05 (Day 2)

Page 19

00020
 1 marked as Plaintiff 38 which I would ask you to take a
 2 look at?
 3 A. (Witness complies.)
 4 MR. GILLEN: Tom, I mentioned to Eric yesterday
 5 that 40, I have a problem with in that I am not sure if
 6 it wasn't inadvertently provided. I need to go back to
 7 the office and check on that.
 8 MR. SCHMIDT: Okay.
 9 MR. GILLEN: Thank you.
 10 BY MR. SCHMIDT:
 11 Q. Dr. Nilsen, have you seen this document before today?
 12 A. I have reviewed over 2,000 documents. Does this jump
 13 out at me? No. Would I have reviewed it before? I
 14 believe so.
 15 Q. Do you recall seeing this e-mail at about the time it
 16 was sent in June of 2004?
 17 A. Not to my recollection, no.
 18 Q. Were you aware in June of 2004 that Seth Cooper or
 19 anyone from the Discovery Institute was reaching out and
 20 trying to contact Mr. Bonsell?
 21 A. Not to my recollection, no.
 22 Q. If you would, look at the e-mail address at the top of
 23 Plaintiff 38. Is the e-mail address for Mr. Bonsell
 24 one that is provided by the School District?
 25 A. Yes.

Richard Nilsen 4/14/05 (Day 2)

Page 20

00049
1 that teachers were not to teach Intelligent Design?
2 A. I am sorry. I don't understand that.
3 Q. Okay. Why weren't the teachers to teach Intelligent
4 Design?
5 A. Based on the fact that it is not one of the standards
6 Q. My reading of the curriculum documents tells me that the
7 amount of time devoted to Evolution is 19 days?
8 A. No.
9 Q. How much time is devoted to Evolution?
10 A. One to two days.
11 Q. What is the origin of life debate that is referred to in
12 the next sentence of Exhibit P-3?
13 A. The origin of life debate is the origin of the creation
14 or beginning, the genesis, if you would, not using
15 Biblical references, but the beginning part of man
16 Q. Of man?
17 A. Yes.
18 Q. What is Darwin's opinion about the origin of life as you
19 understand it? I am now looking at the next sentence.
20 A. I don't know.
21 Q. What did you mean when you put that sentence in the
22 release?
23 A. The Board believes that there are other options and
24 discussions on Darwin's opinion on the origins of life.
25 and I have communicated that.

Richard Nilsen 4/14/05 (Day 2)

Page 49

00050
1 Q. The sentence reads the School Board has noted that there
2 are opinions other than Darwin's on the origin of
3 life -- end of quote.
4 Do you know what Darwin's opinions on the origin
5 of life are?
6 A. No.
7 Q. Did you make any inquiry about what the Board had in
8 mind when it said there are other opinions?
9 A. No. But my context was some Board members differed with
10 Darwin's concept of origins of life and communicated
11 such publicly.
12 Q. Why did you capitalize origin of life in these
13 sentences?
14 A. I have no idea.
15 Q. Are you aware of any opinions other than Darwin's
16 opinion on the origin of life, whatever that may be?
17 A. Yes.
18 Q. What are the other opinions that you are aware of?
19 A. There is the opinion -- and I have no idea how to spell
20 it -- Plantaria, whatever it is, where there are aliens
21 that have come in some capacity. The whole conversation
22 dealing with the pyramids and the structure that the
23 earth was created by an outside force, whatever that --
24 either alien as defined as an entity beyond homo sapiens
25 on earth.

Richard Nilsen 4/14/05 (Day 2)

Page 50

00051
1 There is the Big Bang Theory of where the
2 beginning of time was created out of an explosion in
3 some capacity. And there is also the conversation that
4 there is a Godlike entity that created earth and
5 everything on it.
6 MR. SCHMIDT: Off the record, please.
7 (An off-the-record discussion was had.)
8 (Plaintiffs Exhibit 43 was marked.)
9 BY MR. SCHMIDT:
10 Q. Dr. Nilsen, have you had an opportunity to review
11 Plaintiffs Exhibit 43?
12 A. Yes, I have.
13 Q. Identify the document, please.
14 A. The document is Administrator's Biology Statement in
15 Biology Class.
16 Q. Bates numbered 10991100. Do you know who prepared this
17 document?
18 A. Yes.
19 Q. Who?
20 A. I did.
21 Q. What use was made of the document?
22 A. The document was read in total by either myself or Mr.
23 Baksa.
24 Q. Verbatim?
25 A. 99.9 percent.

Richard Nilsen 4/14/05 (Day 2)

Page 51

00052
1 Q. Was it the plan to stick --
2 A. As close as possible.
3 Q. Paragraph five on page two of the document includes a
4 statement that there will be no other discussion of the
5 issue and your teachers will not answer any questions on
6 this issue.
7 What is this issue that is referred to in that
8 paragraph?
9 A. The issue of Intelligent Design.
10 Q. When you prepared what has been marked as P-43, what was
11 your understanding of the difference between the
12 Intelligent Design explanation of the origin of life and
13 Darwin's explanation of the origin of life?
14 A. When I prepared the document?
15 Q. Right.
16 A. At that time, I don't think I had an understanding.
17 Q. Do you recall when you prepared the document?
18 A. Yes.
19 Q. When?
20 A. It would have been in mid January.
21 Q. Do you have an understanding now?
22 A. I have somewhat of an understanding. I don't think I
23 have a total understanding.
24 Q. I can't ask for perfection, but what is your present
25 understanding?

Richard Nilsen 4/14/05 (Day 2)

Page 52

00053

1 A Intelligent Design refers to an order. Darwin refers to
 2 randomness.
 3 Q And how do those two notions that you have just stated
 4 have to do with the origin of life?
 5 A As it relates to Darwin, there could be a randomness. I
 6 think his theory is survival of the fittest. And
 7 Intelligent Design has a specific design to it, not a
 8 randomness.
 9 Q I think I took that from the order versus random. But
 10 what do those two notions have to do with what you have
 11 used the phrase and it is used in this document the
 12 origin of life, do you have any understanding of the
 13 relationship between the two concepts you have referred
 14 to and the origin of life?
 15 A Not beyond what I have said, no.
 16 Q You have been an educator for going on 20 years?
 17 A Twenty-nine.
 18 Q Twenty-nine years. Can you recall any instance in your
 19 career as an educator when students have been directed
 20 that they are not to discuss topics, and teachers are
 21 not permitted to comment on topics with students?
 22 MR. GILLEN: Object to the form.
 23 A: Yes.
 24 BY MR. SCHMIDT:
 25 Q: Can you give me another circumstance besides this one?

Richard Nilsen 4/14/05 (Day 2)

Page 53

00054

1 A Political affiliation, sexual education, issues within
 2 the community that are highly politically charged.
 3 Q And religion?
 4 A. And religion.
 5 Q Did any parents or students ever contact you after the
 6 statement was read?
 7 A Not that I remember, no.
 8 Q I am going to show you a document that has been marked
 9 previously as Plaintiff's 9. Have you had an opportunity
 10 to look at Exhibit P-9?
 11 A Look at it. Read it in total, no.
 12 Q Let me ask you some questions. If you need to review it
 13 in any detail, just let me know. This is a document
 14 that contains Bates numbered pages 944 through 951. Let
 15 me ask you to turn first to page 946.
 16 A. (Witness complies.)
 17 Q Do you recognize this document?
 18 A Yes.
 19 Q Is this the Biology One Curriculum that was in place
 20 before October 18th, 2004?
 21 A To the best of my ability, yes.
 22 Q I need your help to understand it. As I read this
 23 document, it suggested to me that there were 19 days out
 24 of the biology curriculum devoted to natural selection,
 25 the mechanism of Evolution and the origins of bio

Richard Nilsen 4/14/05 (Day 2)

Page 54

00055

1 diversity. Have I read the top line correctly?
 2 A That's correct.
 3 Q And it appears, for instance, that the references to
 4 Darwin, Darwin's Theory of the origin of species and
 5 issues involving Evolution are spread throughout this 19
 6 day period?
 7 A That is what is written here, correct.
 8 Q As I understood your testimony a few moments ago, it was
 9 the Theory of Evolution was limited to two days in the
 10 biology curriculum. Did I mishear your testimony?
 11 A You did not.
 12 Q Can you explain why you say two days and this appears to
 13 say 19?
 14 A The ugliness that every Superintendent and Assistant
 15 Superintendent has is the fact that teachers teach not
 16 solely the outline of the planned instruction. This
 17 obviously is the case.
 18 Because when asking the specific teachers how many
 19 days they spend on the theory, they said two. So I am
 20 following what they have told us is the reality versus
 21 what is in the planned course. Meaning this document is
 22 obviously the instructional guide, but not what is in
 23 practice.
 24 Q As Superintendent, are you concerned that the guide's
 25 call for 19 days of instruction and your teachers are

Richard Nilsen 4/14/05 (Day 2)

Page 55

00056

1 telling you they are only devoting two?
 2 A I think you noted my introductory comment of the
 3 ugliness of it, and the answer is yes. Whether the
 4 planned course is misdono or the instruction is misdono.
 5 I can't speak to that. But obviously, both should be
 6 similar.
 7 Q Back to page 944, have you seen this memorandum before
 8 today, the memorandum from Trudy Peterman to Mr. Baksa,
 9 Mr. Redding and Mrs. Spahr dated April 1, 2003?
 10 A Yes.
 11 Q I am assuming you saw it in the course of preparing
 12 documents for discovery in this case, but did you see it
 13 about the time it was issued?
 14 A I have no recollection of that except to say that it is
 15 carbon copied to me, and I would expect within my
 16 responsibilities that I would have come across it.
 17 Q Would you have read it?
 18 A Yes.
 19 Q Do you recall doing anything in response to or following
 20 receipt of this memorandum?
 21 A No.
 22 Q You don't recall any discussions with Mr. Baksa or Mrs.
 23 Spahr about it?
 24 A No. Let me rephrase that. About this specific memo
 25 with Mr. Baksa?

Richard Nilsen 4/14/05 (Day 2)

Page 56

00061

- 1 A. No.
- 2 C. Why not?
- 3 A. Two reasons. One is the Superintendent doesn't have
4 direct supervision in the evaluation of teachers. Those
5 are the individual responsibilities of the building
6 principal.
- 7 And secondly, this conversational capacity would
8 end up being between the conversation of Mr. Baksa, Dr.
9 Peterman and her eventual responsibilities of
10 evaluation.
- 11 Q. I misunderstood that answer.
- 12 A. Missing if Mrs. Spahr is misquoting Mr. Baksa, it would
13 be Mr. Baksa's responsibility to communicate to Dr.
14 Peterman of the misquotation.
- 15 Q. Do you know whether he did that or not?
- 16 A. No, I do not know that.
- 17 Q. As I understand what happened in response to the two
18 sentences that appear at the beginning of -- I am sorry
19 -- three sentences that appear at the beginning of this
20 exhibit, Dr. Peterman is disciplined for having made a
21 statement that she heard from Mrs. Spahr, but Mrs. Spahr
22 is not disciplined for having made the original
23 statement which you and Mr. Baksa think is untrue?
- 24 MR. GILLEN: Object to the form.
- 25 A. I can speak to the first which is yes. I can't speak to

Richard Nilsen 4/14/05 (Day 2)

Page 61

00062

- 1 the other point based on the fact that I have not an
2 understanding of what Dr. Peterman did and what Mr.
3 Baksa did with the individual teacher.
- 4 Q. Did you ask Dr. Peterman what she did in her supervision
5 of Mrs. Spahr about this subject?
- 6 A. No, not this subject, no.
- 7 Q. Is it your position as the Superintendent that when
8 somebody that you are evaluating repeats the statement
9 of another person, if that statement turns out to be
10 untrue, that the person you supervise bears the
11 responsibility for that untruth?
- 12 Let me withdraw the question. It's too big. I
13 have already got your answer on it. I understand what
14 you did.
- 15 MR. GILLEN: Thank you, Tom.
- 16 BY MR. SCHMIDT:
- 17 Q. Did you have any further discussion with Mr. Baksa about
18 the subject of his reported conversation with Mrs. Spahr
19 on the topics that are addressed in this memorandum?
- 20 A. Yes.
- 21 Q. When did you have that conversation with him?
- 22 A. Over the past year.
- 23 Q. Did you have a conversation with him around the time
24 that this memorandum was issued in April of '03?
- 25 A. In a general sense, yes. As it relates to specifics,

Richard Nilsen 4/14/05 (Day 2)

Page 62

00063

- 1 no.
- 2 Q. How did you reach the determination to give Dr. Peterman
3 a bad evaluation because of what appears in this first
4 paragraph without doing an investigation --
- 5 MR. GILLEN: Object to the form.
- 6 BY MR. SCHMIDT:
- 7 Q. -- with Mr. Baksa?
- 8 MR. GILLEN: I am sorry.
- 9 MR. SCHMIDT: That is all right. I paused.
- 10 A. The evaluation was not solely based on this individual
11 action. It was significantly broader obviously than
12 this. And the behavior reflected not solely the
13 information, but the process of the information.
- 14 BY MR. SCHMIDT:
- 15 Q. Did you ever instruct Dr. Peterman about how she was to
16 behave or interact with the Board at Board meetings?
- 17 A. Yes.
- 18 Q. What instructions did you give her?
- 19 A. The Board directed me to direct to her that when she
20 came to Board meetings, that she like every other
21 individual was to be recognized prior to coming to the
22 podium, was to direct her comments to the Board and not
23 the constituents.
- 24 She was also not to raise her voice. She was also
25 not to pound the podium. And she was to be on point.

Richard Nilsen 4/14/05 (Day 2)

Page 63

00064

- 1 not wander off a point.
- 2 Q. Did you give her those directions in writing?
- 3 A. Yes.
- 4 Q. Is that the current state of her instructions with
5 respect to Board meetings?
- 6 A. She is no longer employed.
- 7 Q. Was she fired?
- 8 A. No. She has since gone to another district where she is
9 in litigation with the Superintendent because the
10 Superintendent put her on leave, as the prior district
11 also put her on leave. So out of three districts, two
12 out of the three, she was put on leave for behavior
13 unbecoming to an administrator.
- 14 Q. I would like to show you a document that has previously
15 been marked as Plaintiffs 28. I just have a quick
16 question or two about this.
- 17 Dr. Nilsen, at least initially, you can probably
18 answer my question by looking at the first page. If
19 someone else has already asked this, I apologize to you.
- 20 But is this your handwriting on this document?
- 21 A. No.
- 22 Q. Do you know whose it is?
- 23 A. Without certainty. But it does look like Mr. Baksa's.
- 24 It is neater than mine.
- 25 MR. GILLEN: Off the record.

Richard Nilsen 4/14/05 (Day 2)

Page 64

00093
1 activist stand against what the Supreme Court had
2 already done. There was a conversation we had about
3 what was currently being discussed in the national
4 paper, as well as what impact the Board -- I am sorry --
5 what impact the Supreme Court had directly on schools.
6 Q. Okay. Let me just go back to explain one line of
7 testimony you gave earlier this morning. I had asked
8 you a couple of questions about the origin of life
9 debate and what your understanding is of origin of life.
10 As I reflect back on your testimony, I am not sure
11 I understand what you mean when you refer in the
12 documents you have written and what you are
13 understanding is about the policy of the Board when it
14 refers to origin of life.
15 If you will bear with me for a minute, could you
16 explain it again?
17 A. My apologies, but I think you asked three different
18 questions.
19 Q. I am sure I did. That is the topic. If you would, tell
20 me again what your understanding is, Dr. Nilsen's
21 understanding is of the term origin of life?
22 A. The beginning of mankind.
23 Q. Is it your understanding that that is what the Board
24 meant when it included that term in its revised biology
25 curriculum?

Richard Nilsen 4/14/05 (Day 2)

Page 93

00094
1 A. I can't speak for the Board except to say that comment
2 is a reflection of what the teachers said they were
3 doing.
4 Q. Okay. That might be part of where I am getting lost.
5 What comment is a reflection of what the teachers said
6 they are doing?
7 A. Origins of life is not taught.
8 C. Teachers say we're not teaching origins of life; is that
9 what you are saying?
10 A. Yes.
11 Q. And when the teachers say we are not teaching origins of
12 life, what do you understand them to be saying?
13 A. They are not teaching ~~macro~~ evolution.
14 Q. What do you mean by ~~macro~~ evolution?
15 A. The Big Bang Theory; the jumping from species to species
16 piece of Darwinian Theory.
17 Q. And is it your understanding as the Superintendent of
18 the Dover Area School District that when the Board
19 adopted its amended or revised curriculum, it was
20 reflecting that understanding of what the teachers were
21 doing?
22 A. Yes.
23 MR. SCHMIDT: All right. That is all I have.
24 Thank you. I appreciate your staying through lunch to
25 get this completed.

Richard Nilsen 4/14/05 (Day 2)

Page 94

00095
1 MR. GILLEN: I just have a few questions, Tom.
2 BY MR. GILLEN:
3 Q. Mr. Schmidt asked you a few questions. One set of them
4 related to Plaintiffs Deposition Exhibit 9 which is that
5 memo from Dr. Peterman. Tom asked you did you take
6 action in light of that, and you said no.
7 Just to be clear on this point, at the time that
8 you received this memo, did Dr. Peterman have a lot of
9 credibility with you?
10 A. Zero.
11 Q. Was it in large measure because this memo came from Dr.
12 Peterman which explained your inaction?
13 A. Two things. One, first of all, I knew no one was
14 discussing either from the administrative standpoint, or
15 the Board standpoint, or Mr. Baksa's standpoint, or my
16 standpoint any discussion of Creationism. So a memo
17 that generated and stated that there was a discussion of
18 Creationism had absolutely a non starter.
19 Secondly, as it related to Dr. Peterman, I didn't
20 believe anything she put in writing anyway. In fact,
21 one of the prior evaluations I had with her was to stop
22 putting things in writing because she would put things
23 in writing prior to knowing what actually was the
24 reality. And I had to spend time with her going back
25 and correcting what was on the record.

Richard Nilsen 4/14/05 (Day 2)

Page 95

00096
1 She had a long history of putting things in
2 writing that were inaccurate that we had to go back and
3 correct.
4 She had dictated to the faculty that she no longer
5 would talk to any faculty members, and that the only way
6 she would communicate with faculty members is through
7 Department Chairs. And the only way that Department
8 Chairs could talk to her is if they requested a meeting.
9 And then in the middle of that year '03-'04, she
10 communicated the Department Chair, she would no longer
11 talk to them. So she generated information that was
12 totally inaccurate in memo format.
13 So her credibility with me in any written format
14 was absolutely nonexistent. And eventually, it was
15 reflected in the end of the year evaluations.
16 Q. Tom also directed your attention to Plaintiff Exhibit
17 48. When I looked at it here today, I noticed that it
18 said any future communication pertaining to
19 Creationism/Intelligent Design intended for the Science
20 Department shall be in written form.
21 Is it accurate that the teachers when they
22 discussed Intelligent Design equated it with Creationism
23 in the way they have here in this memo?
24 A. Yes. There was never any communication ever on
25 Creationism. And they had a behavior of equating both,

Richard Nilsen 4/14/05 (Day 2)

Page 96

00009

1 correct, three of the districts -- or I am sorry --

2 three of the schools and which biology books they were
3 using.

4 Q. What was your role in 2004 in the work of the curriculum
5 committee's to select or recommend, rather, new
6 textbooks in the School District?

7 A. My role as Superintendent were to place the book that

8 Mr. Baksa as Director of Curriculum Instruction -- to
9 place his recommendation on the Board agenda.

10 Q. It sounds like your role is passive. You simply take
11 whatever Baksa gives you and put it on the agenda
12 without making any judgments about whether it is an
13 appropriate recommendation; am I right about that?

14 A. Passive to the extent of where Mr. Baksa in his capacity
15 makes the recommendation. In this case and in most
16 cases, his recommendation has been put on where I have
17 not questioned his recommendation beyond the fact that
18 did he follow procedure. And when he communicated to me
19 he did, it was placed on the agenda.

20 Q. Mr. Baksa described some of the work that he did with
21 the curriculum committees in the summer of 2004. I
22 believe from his testimony that this inquiry to the
23 parochial schools followed a June meeting of the School
24 District Board when the biology textbook issue was
25 discussed.

Richard Nilsen 4/14/05 (Day 2)

Page 9

00010

1 Were you at that School Board meeting?

2 A. Yes.

3 Q. Do you recall the discussion about biology textbooks in
4 the high school?

5 A. I remember the discussion, the specifics. I am not sure
6 I remember all of them.

7 Q. What do you remember of the discussion?

8 A. I remember that Mr. Buckingham had some concerns about
9 the textbook and was interested in looking at other
10 options.

11 Q. What do you recall he said about his concerns about the
12 textbook?

13 A. I believe he communicated his dissatisfaction with how
14 the Darwinian Theory of Evolution was presented in the
15 book.

16 Q. Was his dissatisfaction with how the Darwinian Theory
17 was presented, or was his dissatisfaction with the
18 absence of any other theory being presented?

19 A. My only recollection is how the Darwinian Theory was
20 presented.

21 Q. What did he say about his dissatisfaction?

22 A. He documented -- and again the documentation I believe
23 you have -- of several concerns about how evolution was
24 being presented in the book. Beyond that, I don't
25 recollect what was specifically stated and/or written.

Richard Nilsen 4/14/05 (Day 2)

Page 10

00011

1 Q. Did you make any notes yourself of the discussion of the
2 biology textbook at that June Board meeting?

3 A. No.

4 Q. Do you have a practice of making notes during Board
5 meetings?

6 A. Yes.

7 Q. What do you do with those notes?

8 A. All the notes I take are actions the Board has requested
9 me to do and/or any changes in future agenda items.
10 Once those items have been completed, those notes are
11 thrown out.

12 Q. Did you make notes of the discussion of the biology
13 textbook at the June meeting?

14 A. No.

15 Q. Did you have any conversation with Mr. Baksa after that
16 meeting about the actions that should follow in
17 connection with Mr. Buckingham's concerns or any other
18 discussion that happened at that June meeting?

19 A. Yes.

20 Q. What was that discussion with Baksa?

21 A. My discussion with Mr. Baksa was he had to decide what
22 direction he was going to go with as it related to the
23 textbook and when the textbook decision was to be made.

24 Q. At that time, I mean at the time of your discussion with
25 Mr. Baksa, what did you think the directions were that

Richard Nilsen 4/14/05 (Day 2)

Page 11

00012

1 he needed to consider?

2 A. I think he needed to consider answering whatever
3 concerns Mr. Buckingham and/or any other Board member
4 had with the present recommended book Miller and Levin
5 Biology.

6 Q. I understand that. But what did you think his options
7 were? You referred -- and I am using the word options.
8 You referred to he needed to decide what direction he
9 was going to go in. That suggests to me that there
10 were -- there was more than one direction available to
11 Baksa.

12 What did you have in mind when you had that
13 conversation with him?

14 A. I don't recommend -- my apologies. I don't recollect
15 the full conversation, but obviously, there would be
16 two. One would be to continue the conversation on the
17 current book. Or two, look for other options that
18 possibly anybody and everybody would be satisfied with.

19 Q. Did you give him any suggestions for how to find out
20 more about other options than simply persisting with the
21 Miller and Levin book?

22 A. Again, I don't remember any specific. It would not be
23 out of character for me to tell him to call and make
24 sure he has contacted every other district and everyone
25 he knows of to see if there would have been another

Richard Nilsen 4/14/05 (Day 2)

Page 12

00013

1 textbook.

2 Now do I remember that specific conversation? No.

3 Would it be out of my character? Again, no.

4 Q. Is it possible that in that conversation you suggested

5 that he not only contact other public school districts

6 but that he contact parochial schools in the area?

7 A. It is possible I told him to contact everybody and

8 anybody that he hadn't contacted before.

9 Q. When you first saw the memorandum reporting on his

10 contacts with parochial schools, what did you do with

11 that information?

12 A. Read it.

13 Q. Did you talk to him about it?

14 A. Yes, but I don't remember the conversation.

15 Q. Were you surprised when you got the memorandum to see

16 that it only reported on contacts with parochial schools

17 and didn't provide any information about contacts with

18 other area schools?

19 A. No.

20 Q. I ask why not?

21 A. Because I would have assumed he would have contacted the

22 other parochial schools beforehand.

23 Q. Did you mean most of the other public schools?

24 A. Yes, my apologies.

25 Q. Did you know that he actually did make those contacts?

Richard Nilsen 4/14/05 (Day 2)

Page 13

00014

1 A. No, I don't know that as a fact.

2 Q. Did you suggest at any time to Mr. Baksa that he speak

3 with any of the families that are providing home

4 schooling in your district --

5 A. No.

6 Q. -- to see what textbooks they used?

7 A. No.

8 Q. Did you make any inquiries on your own about alternative

9 biology textbooks? That is alternatives to Miller and

10 Levin.

11 A. No.

12 Q. What was done, if you know, with the information that

13 Mr. Baksa collected about the books being used in

14 parochial schools?

15 A. I do not know.

16 Q. Did you share the memorandum or that information with

17 any Board member?

18 A. I have no recollection of that.

19 Q. Did you ask Mr. Baksa to share that information with any

20 Board member?

21 A. I have no recollection of that either.

22 Q. I am trying to understand what happened when he

23 developed the information. You received the

24 information, and the sense I have is that it landed on a

25 piece of paper, and the piece of paper landed in a

Richard Nilsen 4/14/05 (Day 2)

Page 14

00015

1 drawer or in a file, and that no use was made of it.

2 A. Well --

3 Q. I'm trying to figure out what use was made of that

4 information since somebody went to the trouble to

5 collect it.

6 A. Well, I think that is a question that needs to be

7 directed to Mr. Baksa being he generated information and

8 it was his responsibility to research and make the

9 recommendation on the textbook.

10 Q. Did you see at this time, which is after the June Board

11 meeting, that the selection of a biology textbook was

12 not just the selection of another textbook but had

13 become a matter of primary interest to the Board, at

14 least in terms of its curriculum responsibilities?

15 A. I am sorry. I don't understand the question.

16 Q. It was a cumbersome question. Can you remember any

17 other debate and discussion involving the teachers, the

18 administration and the Board on a textbook selection

19 that has the same characteristics as what you and the

20 District have been through since last June on the

21 selection of a biology textbook?

22 A. Yes.

23 Q. Which textbook was that?

24 A. The chemistry book the prior year and the family

25 consumer science books the prior year.

Richard Nilsen 4/14/05 (Day 2)

Page 15

00016

1 Q. What was the controversy involving the chemistry book?

2 A. The financial issue, as well as the issue of whether the

3 teachers needed the book or not.

4 Q. By financial, you mean the cost of the book?

5 A. The ability for the District to pay for a new book.

6 Q. I assume whether the teachers needed it or not was an

7 aspect of that financial decision?

8 A. Yes.

9 Q. And the other book was family consumer science?

10 A. That is correct.

11 Q. What was the controversy surrounding that?

12 A. The controversy surrounded whether it was an identical

13 replacement of the book that the faculty already had,

14 and the issue of whether the Board could once again

15 finance a textbook that the teachers already had in

16 their possession.

17 Q. It strikes me that both of those controversies -- and I

18 will use that word in quotes -- involved basically

19 financial considerations, cost considerations. It

20 appears to me that the discussions about the biology

21 book involve its contents.

22 Can you think of any other situation when a book

23 is being considered by the Board for inclusion in the

24 curriculum when there has been this kind of attention

25 and controversy devoted to that subject?

Richard Nilsen 4/14/05 (Day 2)

Page 16

00017

1 A. I will clarify your question. The family consumer
2 science book was content issue based on the fact that
3 they thought the content was already in our curriculum
4 and didn't see the reason to purchase another book that
5 had the same content.

6 Q. Okay.

7 A. Not specifically along the same lines, but along the
8 same general conversation. The District gets a donation
9 from the county on a book pamphlet that we give to our
10 students that has a number of agencies listed in it, and
11 a Board member and a parent had a considerable concern
12 on the information that was in the book, specifically
13 dealing with comments dealing with sexual education and
14 issues concerning specific agencies that was in there.

15 To the point of where we ended up sending home
16 information prior to the students receiving the books,
17 as well as a discussion of whether to even continue
18 handing out the individual books.

19 And through my experience, not only in this
20 district, but other districts, any time we have adopted
21 a health curriculum, there has always been conversations
22 zeroing in on what is and what is not taught as it
23 relates to the curriculum.

24 Mr. Bonsell and I had conversations and I believe
25 a third party, but nonetheless I believe Mr. Bonsell has

Richard Nilsen 4/14/05 (Day 2)

Page 17

00018

1 also talked to Mr. Baksa about the health curriculum in
2 our education dealing with abstinence.

3 I know Mr. Baksa is meeting next week, if not the
4 following week, with another Board member dealing with
5 our drug and alcohol curriculum, specifically where
6 inhalants are being taught.

7 If your question is does the Board hold
8 discussions on multiple issues with content beyond this
9 individual issue, my experience is yes.

10 Q. On those issues where the Board has either demonstrated
11 or expressed a keen interest in a decision like the
12 distribution of a pamphlet, or the selection of a
13 textbook, is it your practice as Mr. Baksa's supervisor
14 and as the Superintendent of Schools to basically say we
15 have got to pay attention to this, get it right, be sure
16 that we do what we need to do to be giving all the
17 information to the Board and do the best job we can?

18 You don't treat it as a routine matter, do you?

19 MR. GILLEN: I object to the form.

20 A. I think it is a routine matter. I think the routine
21 matter of the Board's reviewing curriculum and making
22 comments about curriculum is routine. Board members
23 historically have had conversations about what is in the
24 curriculum, and their recommendations on what should be
25 in the curriculum, and what type of curriculum should be

Richard Nilsen 4/14/05 (Day 2)

Page 18

00019

1 placed in our planned courses. That is a routine
2 matter.

3 BY MR. SCHMIDT:

4 Q. At the time of the June meeting in 2004, had you ever
5 heard of the notion of Intelligent Design?

6 A. Not that I can remember, no.

7 Q. Do you remember your first contact with the Discovery
8 Institute? And by you in this case, I am referring to
9 you personally.

10 A. Me personally, yes.

11 Q. When did that contact take place?

12 A. The fall of 2004.

13 Q. Where did the contact take place?

14 A. Over the phone.

15 Q. Who else was involved in the telephone contact?

16 A. No one else.

17 Q. That wasn't meant to be a trick question. You were on
18 the phone. Who else was on the phone, somebody from the
19 Discovery Institute?

20 A. Yes.

21 Q. Do you remember who it was?

22 A. No, I don't.

23 Q. Do you know someone named Seth Cooper?

24 A. Yes.

25 Q. There is a deposition exhibit that has previously been

Richard Nilsen 4/14/05 (Day 2)

Page 19

00020

1 marked as Plaintiff 38 which I would ask you to take a
2 look at?

3 A. (Witness complies.)

4 MR. GILLEN: Tom, I mentioned to Eric yesterday
5 that 40, I have a problem with in that I am not sure if
6 it wasn't inadvertently provided. I need to go back to
7 the office and check on that.

8 MR. SCHMIDT: Okay.

9 MR. GILLEN: Thank you.

10 BY MR. SCHMIDT:

11 Q. Dr. Nilsen, have you seen this document before today?

12 A. I have reviewed over 2,000 documents. Does this jump
13 out at me? No. Would I have reviewed it before? I
14 believe so.

15 Q. Do you recall seeing this e-mail at about the time it
16 was sent in June of 2004?

17 A. Not to my recollection, no.

18 Q. Were you aware in June of 2004 that Seth Cooper or
19 anyone from the Discovery Institute was reaching out and
20 trying to contact Mr. Bonsell?

21 A. Not to my recollection, no.

22 Q. If you would, look at the e-mail address at the top of
23 Plaintiff 38. Is the e-mail address for Mr. Bonsell
24 one that is provided by the School District?

25 A. Yes.

Richard Nilsen 4/14/05 (Day 2)

Page 20

00049
 1 that teachers were not to teach Intelligent Design?
 2 A. I am sorry. I don't understand that.
 3 Q. Okay. Why weren't the teachers to teach Intelligent
 4 Design?
 5 A. Based on the fact that it is not one of the standards.
 6 Q. My reading of the curriculum documents tells me that the
 7 amount of time devoted to Evolution is 19 days?
 8 A. No.
 9 Q. How much time is devoted to Evolution?
 10 A. One to two days.
 11 Q. What is the origin of life debate that is referred to in
 12 the next sentence of Exhibit P-3?
 13 A. The origin of life debate is the origin of the creation
 14 or beginning, the genesis, if you would, not using
 15 Biblical references, but the beginning part of man.
 16 Q. Of man?
 17 A. Yes.
 18 Q. What is Darwin's opinion about the origin of life as you
 19 understand it? I am now looking at the next sentence.
 20 A. I don't know.
 21 Q. What did you mean when you put that sentence in the
 22 release?
 23 A. The Board believes that there are other options and
 24 discussions on Darwin's opinion on the origins of life,
 25 and I have communicated that.

Richard Nilsen 4/14/05 (Day 2)

Page 49

00050
 1 Q. The sentence reads the School Board has noted that there
 2 are opinions other than Darwin's on the origin of
 3 life -- end of quote.
 4 Do you know what Darwin's opinions on the origin
 5 of life are?
 6 A. No.
 7 Q. Did you make any inquiry about what the Board had in
 8 mind when it said there are other opinions?
 9 A. No. But my context was some Board members differed with
 10 Darwin's concept of origins of life and communicated
 11 such publicly.
 12 Q. Why did you capitalize origin of life in these
 13 sentences?
 14 A. I have no idea.
 15 Q. Are you aware of any opinions other than Darwin's
 16 opinion on the origin of life, whatever that may be?
 17 A. Yes.
 18 Q. What are the other opinions that you are aware of?
 19 A. There is the opinion -- and I have no idea how to spell
 20 it -- Plantaria, whatever it is, where there are aliens
 21 that have come in some capacity. The whole conversation
 22 dealing with the pyramids and the structure that the
 23 earth was created by an outside force, whatever that --
 24 either alien as defined as an entity beyond homo sapiens
 25 on earth.

Richard Nilsen 4/14/05 (Day 2)

Page 50

00051
 1 There is the Big Bang Theory of where the
 2 beginning of time was created out of an explosion in
 3 some capacity. And there is also the conversation that
 4 there is a Godlike entity that created earth and
 5 everything on it.
 6 MR. SCHMIDT: Off the record, please.
 7 (An off-the-record discussion was had.)
 8 (Plaintiffs Exhibit 43 was marked.)
 9 BY MR. SCHMIDT:
 10 Q. Dr. Nilsen, have you had an opportunity to review
 11 Plaintiffs Exhibit 43?
 12 A. Yes, I have.
 13 Q. Identify the document, please.
 14 A. The document is Administrator's Biology Statement in
 15 Biology Class.
 16 Q. Bates numbered 10991100. Do you know who prepared this
 17 document?
 18 A. Yes.
 19 Q. Who?
 20 A. I did.
 21 Q. What use was made of the document?
 22 A. The document was read in total by either myself or Mr.
 23 Baksa.
 24 Q. Verbatim?
 25 A. 99.9 percent.

Richard Nilsen 4/14/05 (Day 2)

Page 51

00052
 1 Q. Was it the plan to stick --
 2 A. As close as possible.
 3 Q. Paragraph five on page two of the document includes a
 4 statement that there will be no other discussion of the
 5 issue and your teachers will not answer any questions on
 6 this issue.
 7 What is this issue that is referred to in that
 8 paragraph?
 9 A. The issue of Intelligent Design.
 10 Q. When you prepared what has been marked as P-43, what was
 11 your understanding of the difference between the
 12 Intelligent Design explanation of the origin of life and
 13 Darwin's explanation of the origin of life?
 14 A. When I prepared the document?
 15 Q. Right.
 16 A. At that time, I don't think I had an understanding.
 17 Q. Do you recall when you prepared the document?
 18 A. Yes.
 19 Q. When?
 20 A. It would have been in mid January.
 21 Q. Do you have an understanding now?
 22 A. I have somewhat of an understanding. I don't think I
 23 have a total understanding.
 24 Q. I can't ask for perfection, but what is your present
 25 understanding?

Richard Nilsen 4/14/05 (Day 2)

Page 52

00053

1 A Intelligent Design refers to an order. Darwin refers to
2 randomness.

3 Q And how do those two notions that you have just stated
4 have to do with the origin of life?

5 A As it relates to Darwin, there could be a randomness. I
6 think his theory is survival of the fittest. And
7 Intelligent Design has a specific design to it, not a
8 randomness.

9 Q I think I took that from the order versus random. But
10 what do those two notions have to do with what you have
11 used the phrase and it is used in this document the
12 origin of life, do you have any understanding of the
13 relationship between the two concepts you have referred
14 to and the origin of life?

15 A. Not beyond what I have said, no.

16 Q You have been an educator for going on 20 years?

17 A Twenty-nine.

18 Q Twenty-nine years. Can you recall any instance in your
19 career as an educator when students have been directed
20 that they are not to discuss topics, and teachers are
21 not permitted to comment on topics with students?

22 MR. GILLEN: Object to the form.

23 A. Yes.

24 BY MR. SCHMIDT:

25 Q Can you give me another circumstance besides this one?

Richard Nilsen 4/14/05 (Day 2)

Page 53

00054

1 A. Political affiliation, sexual education, issues within
2 the community that are highly politically charged.

3 Q. And religion?

4 A. And religion.

5 Q. Did any parents or students ever contact you after the
6 statement was read?

7 A. Not that I remember, no.

8 Q. I am going to show you a document that has been marked
9 previously as Plaintiff 9. Have you had an opportunity
10 to look at Exhibit P-9?

11 A. Look at it. Read it in total, no.

12 Q. Let me ask you some questions. If you need to review it
13 in any detail, just let me know. This is a document
14 that contains Bates numbered pages 944 through 951. Let
15 me ask you to turn first to page 946.

16 A. (William complies.)

17 Q. Do you recognize this document?

18 A. Yes.

19 Q. Is this the Biology One Curriculum that was in place
20 before October 18th, 2004?

21 A. To the best of my ability, yes.

22 Q. I need your help to understand it. As I read this
23 document, it suggested to me that there were 19 days out
24 of the biology curriculum devoted to natural selection,
25 the mechanism of Evolution and the origins of bio

Richard Nilsen 4/14/05 (Day 2)

Page 54

00055

1 diversity. Have I read the top line correctly?

2 A. That's correct.

3 Q. And it appears, for instance, that the references to
4 Darwin, Darwin's Theory of the origin of species and
5 issues involving Evolution are spread throughout this 19
6 day period?

7 A. This is what is written here, correct.

8 Q. As I understood your testimony a few moments ago, it was
9 the Theory of Evolution was limited to two days in the
10 biology curriculum. Did I mishear your testimony?

11 A. You did not.

12 Q. Can you explain why you say two days and this appears to
13 say 19?

14 A. The opinion that every Superintendent and Assistant
15 Superintendent has is the fact that teachers teach not
16 solely the outline of the planned instruction. This
17 obviously is the case.

18 Because when asking the specific teachers how many
19 days they spend on the theory, they said two. So I am
20 following what they have told us is the reality versus
21 what is in the planned course. Meaning this document is
22 obviously the instructional guide, but not what is in
23 practice.

24 Q. As Superintendent, are you concerned that the guide's
25 call for 19 days of instruction and your teachers are

Richard Nilsen 4/14/05 (Day 2)

Page 55

00056

1 telling you they are only devoting two?

2 A. I think you noted my introductory comment of the
3 opinion of it, and the answer is yes. Whether the
4 planned course is misdone or the instruction is misdone,
5 I can't speak to that. But obviously, both should be
6 similar.

7 Q. Back to page 944, have you seen this memorandum before
8 today, the memorandum to Bill Trudy Peterson to Mr. Bakas,
9 Mr. Riddling and Mrs. Spahr dated April 1, 2003?

10 A. Yes.

11 Q. I am assuming you saw it in the course of preparing
12 documents for discovery in this case, but did you see it
13 about the time it was issued?

14 A. I have no recollection of that except to say that it is
15 carbon copied to me, and I would expect within my
16 responsibility that I would have seen it.

17 Q. What you have read it?

18 A. Yes.

19 Q. Do you recall doing anything in response to or following
20 receipt of this memorandum?

21 A. No.

22 Q. You don't recall any discussions with Mr. Bakas or Mrs.
23 Spahr about it?

24 A. No. Let me rephrase that. About this specific memo
25 with Mr. Bakas?

Richard Nilsen 4/14/05 (Day 2)

Page 56

00061

- 1 A. No.
- 2 Q. Why not?
- 3 A. Two reasons. One is the Superintendent doesn't have
- 4 direct supervisory in the evaluation of teachers. Those
- 5 are the traditional responsibilities of the building
- 6 principal.
- 7 And secondly, this conversational capacity would
- 8 end up being between the conversation of Mr. Baksa, Dr.
- 9 Peterman and her eventual responsibilities of
- 10 evaluation.
- 11 Q. I understand that answer.
- 12 A. Meaning if Mrs. Spahr is answering Mr. Baksa, it would
- 13 be Mr. Baksa's responsibility to communicate to Dr.
- 14 Peterman of the misapprehension.
- 15 Q. Do you know whether he did that or not?
- 16 A. No, I do not know that.
- 17 Q. As I understand what happened in response to the two
- 18 sentences that appear at the beginning of -- I am sorry
- 19 -- three sentences that appear at the beginning of this
- 20 exhibit, Dr. Peterman is disciplined for having made a
- 21 statement that she heard from Mrs. Spahr, but Mrs. Spahr
- 22 is not disciplined for having made the original
- 23 statement which you and Mr. Baksa think is untrue?
- 24 MR. GILLEN: Object to the form.
- 25 A. I can speak to the first which is yes. I can't speak to

Richard Nilsen 4/14/05 (Day 2)

Page 61

00062

- 1 the other point based on the fact that I have not an
- 2 understanding of what Dr. Peterman did and what Mr.
- 3 Baksa did with the individual teacher.
- 4 Q. Did you ask Dr. Peterman what she did in her supervision
- 5 of Mrs. Spahr about this subject?
- 6 A. No, not this subject, no.
- 7 Q. Is it your position as the Superintendent that when
- 8 somebody that you are evaluating repeats the statement
- 9 of another person, if that statement turns out to be
- 10 untrue, that the person you supervise bears the
- 11 responsibility for that untruth?
- 12 Let me withdraw the question. It's too big. I
- 13 have already got your answer on it. I understand what
- 14 you did.
- 15 MR. GILLEN: Thank you, Tom.
- 16 BY MR. SCHMIDT:
- 17 Q. Did you have any further discussion with Mr. Baksa about
- 18 the subject of his reported conversation with Mrs. Spahr
- 19 on the topics that are addressed in this memorandum?
- 20 A. Yes.
- 21 Q. When did you have that conversation with him?
- 22 A. Over the past year.
- 23 Q. Did you have a conversation with him around the time
- 24 that this memorandum was issued in April of '03?
- 25 A. In a general sense, yes. As it relates to specifics,

Richard Nilsen 4/14/05 (Day 2)

Page 62

00063

- 1 no.
- 2 Q. How did you reach the determination to give Dr. Peterman
- 3 a bad evaluation because of what appears in this first
- 4 paragraph without doing an investigation --
- 5 MR. GILLEN: Object to the form.
- 6 BY MR. SCHMIDT:
- 7 Q. -- with Mr. Baksa?
- 8 MR. GILLEN: I am sorry.
- 9 MR. SCHMIDT: That is all right. I paused.
- 10 A. The evaluation was not solely based on this individual
- 11 action. It was significantly broader obviously than
- 12 this. And the behavior reflected not solely the
- 13 information, but the process of the information.
- 14 BY MR. SCHMIDT:
- 15 Q. Did you ever instruct Dr. Peterman about how she was to
- 16 behave or interact with the Board at Board meetings?
- 17 A. Yes.
- 18 Q. What instructions did you give her?
- 19 A. The Board directed me to direct to her that when she
- 20 came to Board meetings, that she like every other
- 21 individual was to be recognized prior to coming to the
- 22 podium, was to direct her comments to the Board and not
- 23 the constituents.
- 24 She was also not to raise her voice. She was also
- 25 not to pound the podium. And she was to be on point,

Richard Nilsen 4/14/05 (Day 2)

Page 63

00064

- 1 not wander off a point.
- 2 Q. Did you give her those directions in writing?
- 3 A. Yes.
- 4 Q. Is that the current state of her instructions with
- 5 respect to Board meetings?
- 6 A. She is no longer employed.
- 7 Q. Was she fired?
- 8 A. No. She has since gone to another district where she is
- 9 in litigation with the Superintendent because the
- 10 Superintendent put her on leave, as the prior district
- 11 also put her on leave. So out of three districts, two
- 12 out of the three, she was put on leave for behavior
- 13 unbecoming to an administrator.
- 14 Q. I would like to show you a document that has previously
- 15 been marked as Plaintiffs 28. I just have a quick
- 16 question or two about this.
- 17 Dr. Nilsen, at least initially, you can probably
- 18 answer my question by looking at the first page. If
- 19 someone else has already asked this, I apologize to you.
- 20 But is this your handwriting on this document?
- 21 A. No.
- 22 Q. Do you know whose it is?
- 23 A. Without certainty. But it does look like Mr. Baksa's.
- 24 It is neater than mine.
- 25 MR. GILLEN: Off the record.

Richard Nilsen 4/14/05 (Day 2)

Page 64

00093

1 activist stand against what the Supreme Court had
2 already done. There was a conversation we had about
3 what was currently being discussed in the national
4 paper, as well as what impact the Board - I am sorry -
5 what impact the Supreme Court had directly on schools.
6 Q. Okay. Let me just go back to explain one line of
7 testimony you gave earlier this morning. I had asked
8 you a couple of questions about the origin of life
9 debate and what your understanding is of origin of life.
10 As I reflect back on your testimony, I am not sure
11 I understand what you mean when you refer in the
12 documents you have written and what you are
13 understanding is about the policy of the Board when it
14 refers to origin of life.

15 If you will bear with me for a minute, could you
16 explain it again?

17 A. My apologies, but I think you asked three different
18 questions.

19 Q. I am sure I did. That is the topic. If you would, tell
20 me again what your understanding is. Dr. Wilson's
21 understanding is of the same origin of life.

22 A. The beginning of mankind.
23 Q. Is it your understanding that that is what the Board
24 means when it included that term in its revised biology
25 curriculum?

Richard Nilsen 4/14/05 (Day 2)

Page 93

00094

1 A. I don't speak for the Board except to say that comment
2 is a reflection of what the teachers said they were
3 doing.

4 Q. Okay. That might be part of what I am getting lost.
5 What comment is a reflection of what the teachers said
6 they are doing?

7 A. Origin of life is not taught.

8 Q. Teachers are not teaching origin of life; is that
9 what you are saying?

10 A. Yes.

11 Q. And when the teachers say we are not teaching origin of
12 life, what do you understand them to be saying?

13 A. They are not teaching science evolution.

14 Q. What do you mean by science evolution?

15 A. The Big Bang Theory, the jumping from species to species
16 pieces of Darwinian Theory.

17 Q. And it is your understanding as the Superintendent of
18 the Dover Area School District that when the Board
19 adopted its statement as revised curriculum, it was
20 reflecting that understanding of what the teachers were
21 saying?

22 A. Yes.

23 MR. SCHMIDT: All right. That is all I have.

24 Thank you. I appreciate your staying through lunch to
25 get this completed.

Richard Nilsen 4/14/05 (Day 2)

Page 94

00095

1 MR. GILLEN: I just have a few questions, Tom.

2 BY MR. GILLEN:

3 Q. Mr. Schmidt asked you a few questions. One set of them
4 related to Plaintiff's Deposition Exhibit 9 which is that
5 memo from Dr. Peterman. Tom asked you did you take
6 action in light of that, and you said no.

7 Just to be clear on this point, at the time that
8 you received this memo, did Dr. Peterman have a lot of
9 credibility with you?

10 A. Zero.

11 Q. Was it in large measure because this memo came from Dr.
12 Peterman which explained your inaction?

13 A. Two things. One, first of all, I knew no one was
14 discussing either from the administrative standpoint, or
15 the Board standpoint, or Mr. Baksa's standpoint, or my
16 standpoint any discussion of Creationism. So a memo
17 that generated and stated that there was a discussion of
18 Creationism had absolutely a non starter.

19 Secondly, as it related to Dr. Peterman, I didn't
20 believe anything she put in writing anyway. In fact,
21 one of the prior evaluations I had with her was to stop
22 putting things in writing because she would put things
23 in writing prior to knowing what actually was the
24 reality. And I had to spend time with her going back
25 and correcting what was on the record.

Richard Nilsen 4/14/05 (Day 2)

Page 95

00096

1 She had a long history of putting things in
2 writing that were inaccurate that we had to go back and
3 correct.

4 She had dictated to the faculty that she no longer
5 would talk to any faculty members, and that the only way
6 she would communicate with faculty members is through
7 Department Chairs. And the only way that Department
8 Chairs could talk to her is if they requested a meeting.
9 And then in the middle of that year '03-'04, she
10 communicated the Department Chair, she would no longer
11 talk to them. So she generated information that was
12 totally inaccurate in memo format.

13 So her credibility with me in any written format
14 was absolutely nonexistent. And eventually, it was
15 reflected in the end of the year evaluations.

16 Q. Tom also directed your attention to Plaintiff Exhibit
17 48. When I looked at it here today, I noticed that it
18 said any future communication pertaining to
19 Creationism/Intelligent Design intended for the Science
20 Department shall be in written form.

21 Is it accurate that the teachers when they
22 discussed Intelligent Design equated it with Creationism
23 in the way they have here in this memo?

24 A. Yes. There was never any communication ever on
25 Creationism. And they had a behavior of equating both,

Richard Nilsen 4/14/05 (Day 2)

Page 96